Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 75-59

In the Supreme Court of the United States

OCTOBER TERM, 1975

ELIZABETH M. BRADY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The sole question presented by the petition is whether petitioner is entitled to deductions for a "loss" in 1967 and 1968, which allegedly arose when she was unable to realize rental income from part of her property because of the action of state and local officials.[1] The Tax Court upheld the Commis-

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[1] In a previous refund suit in the Eastern District of Pennsylvania, petitioner claimed a similar deduction. In an unreported order, the district court dismissed her complaint. The

sioner's disallowance of the deduction (Pet. App. 9-11), and the court of appeals affirmed by order (Pet. App. 12-13).

It is well established that the failure to realize income does not produce a deductible loss. *Hort* v. *Commissioner*, 313 U.S. 28. Petitioner does not claim that the *Hort* decision was erroneous, but seeks review in order to have an exception to the statute "carved out" (Pet. 8). However, deductions allowed by the tax laws are purely a matter of "legislative grace," fully within the province of the Congress, and a taxpayer seeking a deduction must "be able to point to an applicable statute and show that he comes within its terms." *New Colonial Co.* v. *Helvering*, 292 U.S. 435, 440. Since petitioner acknowledges (Pet. 7) that the decision below is in accordance with the terms of the statute, there is no occasion for further review.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.

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court of appeals affirmed (order, C.A. 3, December 11, 1974), and this Court denied certiorari on May 19, 1975 (No. 74-1100).

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